PARLIAMENT OF NEW SOUTH WALES

JOINT SELECT COMMITTEE ON VICTIMS COMPENSATION

REPORT:

Inquiry Into Psychological Injury - SHOCK -

December 1998

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TERMS OF REFERENCE

The Joint Select Committee on Victims Compensation is inquiring into the long term financial viability of the victims compensation fund in particular the injury category of psychological injury - termed "shock", particular emphasis on:

a. whether the current categories of shock based on the arbitrary length of suffering are appropriate and equitable;

b. whether it would be more appropriate and equitable to replace the category of shock with a solatium or some other type of financial acknowledgement of a victim's personal suffering;

c. whether monetary compensation is the most appropriate method to deal with shock in all instances;

d. Any other related matters.

COMMITTEE MEMBERSHIP

The Joint Committee consists of five Members of the Legislative Assembly and four Members of the Legislative Council. These members are:

Legislative Assembly

Mr Anthony Stewart, MP (Chairman)
Mr James Anderson, MP
Ms Marie Andrews, MP
Mr Wayne Merton, MP
The Hon Gerald Peacocke, MP

Legislative Council

The Hon Jan Burnswoods, MLC
The Hon Michael Gallacher, MLC
The Hon Richard Jones, MLC
The Hon Bryan Vaughan, MLC

Consultant to the Committee

Mr Keith Ferguson

Secretariat

Ms Catherine Watson, Director
Ms Meryl James, Research Officer
Ms Glendora Magno, Assistant Committee Officer

CHAIRMAN'S FOREWORD

During the inquiry into complaints lodged by the Walsh family into the practices of a firm of solicitors the Committee heard evidence from the Victims Compensation Tribunal that there has been a dramatic increase in the number of claims for psychological injuries, termed "Shock" in the *Victims Compensation Act 1996.* Claims for shock lodged by a number of specified solicitors firms have increased by as much as 30 per cent. Due to this increase, the Tribunal is experiencing a substantial cost 'blow-out'.

This evidence supported the concerns first mentioned in the Committee's *Second Interim Report: The Long Term Financial Viability of the Victims Compensation Fund,* tabled in December 1997.This report recommended that the shock category of injury be reviewed with a view to its deletion from the Schedule of Injuries, with the exception of sexual assault, homicide and domestic violence cases.

From the evidence it appears to the Committee that the definition of shock contained in the 1996 Act is vague and contributes to a system which is open to abuse. There also appears to be a developing trend of reports being written by favourable psychologists/psychiatrists targeted by solicitors to assist victims.

The Committee was formed in November 1996 with terms of reference to report on the alternative methods of providing for the needs of victims of crime and secondly, the long term financial viability of the Victims Compensation fund. The evidence received by the Committee during the past 2 years seems to suggest that providing lump sum financial compensation to victims of crime is not necessarily the best way to assist victims of crime in their recovery from the experience of a traumatic event. There is a need for a co-ordinated approach to the rehabilitation of victims of crime by providing a range of treatments, including counselling.

This report follows, and compliments, the findings reached in the Committee's previous reports. The Committee's *First interim Report: Alternative Methods of Providing for the Needs of Victims of Crime* provided information and made recommendations concerning a number of options that would be of assistance to victims in their rehabilitation. In its Second Interim Report the Committee further expanded on the provision for counselling including a recommendation that the Victims of Crime Bureau be funded to employ full time counsellors.

It was then, and is now, the Committee's conclusion that *"The purpose of victims compensation schemes is to ensure that the needs of genuine victims of injury*

are met at a reasonable cost to the community." The needs of *genuine* victims of crime are paramount. The evidence compiled in this inquiry suggests vigilance is required to ensure that funds are not dissipated through the awarding of compensation or providing treatment and counselling to claimants who would otherwise not be eligible or who may be exaggerating their claim. There is a need for Parliament to continue to monitor and review the long term financial viability of the Victims Compensation Fund.

It has given me personal satisfaction to serve as Chairman of this Committee whose achievements can be measured in the amendments to the *Victims Compensation Act* recently passed by Parliament in the Amendment Bill 1998. As acknowledged by the Hon. R. D. Dyer during the second reading, the amendments flow from the recommendations of this Committee.

I would like to thank my fellow Committee members for their valuable contributions to not only this report but to the previous inquiries undertaken during the past two years. There was a feeling of bi-partianship and commitment of all Committee members in the proceedings and recommendations.

I also wish to thank all those who submitted and gave evidence to the Committee's inquiries. I also wish to thank the Committee Consultant Mr. Keith Ferguson and the Committee Secretariat for the preparation of this report.

Tony Stewart MP
Chairman.

SUMMARY OF RECOMMENDATIONS

That the New South Wales Parliament continue to monitor and review the long term financial viability of the Victims Compensation Fund through its Committee process, with emphasis on the possible misuse of the new category of psychological or psychiatric injury, the provision of approved counselling, and any other specified area.

CHAPTER 1

WHY REVIEW SHOCK

1.1 Introduction

The Committee reported to Parliament in December 1997 on the long term financial viability of the Victims Compensation Fund. One recommendation in that report involved the deletion of the injury category of shock other than for permanent injuries. At the time the Committee was aware that the 1996 Act had only been in operation for a short time and a review of shock would be advantageous when more statistical information became available.

In June 1998 the Committee concluded an inquiry into complaints lodged by the Walsh family, who had received victims compensation, into the practices of a firm of solicitors known as Rakus Solicitors. Evidence provided to the Committee during that inquiry suggested that trends which had been identified in December 1997 were continuing. The potential for a cost blow out of the Fund in the area of shock is such that the Committee resolved to conduct a further inquiry into the category of shock.

1.2 History of the Committee's Deliberations

Part of its terms of reference is for the Committee to inquire into the long term financial viability of the Victims Compensation Fund, having regard to, among other things, the number and size of awards and *"the effect upon costs of monetary compensation being limited to victims of crime with serious or permanent injuries."*

In the Committee's Report *"Second Interim Report: The Long Term Financial Viability of the Victims Compensation Fund"* tabled in December 1997, the Victims Compensation Scheme was extensively reviewed and 22 recommendations made. One of those recommendations involved the injury category of shock. That recommendation was *"that consideration be given to deleting the categories of Shock other than for permanent injuries, homicide and sexual assault."*

At the time of the inquiry in 1997 the Victims Compensation Act 1996 had been in operation for a total of eight months, the Act proclaimed to commence on 7 April 1997. The statistical and case information provided to the Committee was largely anecdotal.

Mr. Phil O'Toole, the Director of Victims Services raised this point with the Committee:

Chairman: *What percentage of claims under the scheme would be these shock claims?*

Mr. O'Toole: *Only a minimal number of applications have been determined, so I cannot give any statistics in relation to those matters.*

Transcript of Evidence, 10 November 1997

What became clear to the Committee was that the new category of shock was being exploited to enable victims who would normally not receive compensation, for example, persons who received only minor bruising and lacerations, to seek and receive an award.

Mr. O'Toole: *Another issue that has already been shown in the matters that have been determined under the new Act is ..... you take certain injuries- for example soft tissue damage, scars and bruising and so forth-out of the table, it is taking a different approach. Solicitors are heading more in the direction of claiming shock in order to obtain some sort of award for the victim.*

Transcript of Evidence, 10 November 1997

1.3 Purpose of Victims Compensation Scheme

The introduction of the 1996 Victims Compensation Act provided for compensation for injury to be determined according to a comprehensive injury and award schedule. Victims of sexual assault, and family members of a victim of homicide have been recognised as having specific needs and consequently a new category under the Schedule was introduced. The injury category does not require the victim to prove that they have a psychological injury in terms of nervous shock or mental illness.

For victims of violent crime other than sexual assault the Schedule provides for compensation in cases of psychological injury, termed "shock" under the Act. This definition of shock comprises conditions attributed to post traumatic stress disorder, depression and similar conditions, and provides for both psychological and physical symptoms and relevant disabilities.

The Committee has received evidence, both in its November 1997 deliberations and during the current inquiry, that the definition of shock, and the possibility of an increasing award dependant upon the duration, has resulted in a substantial increase in the number of claims for shock when compared to similar claims lodged under the provisions of the 1987 Act. Concerns were expressed to the Committee about the definition and methods and practices of medical and legal practitioners when dealing with victims compensation cases. These concerns were also raised during the Committee's 1997 deliberations.

The Committee at the time of its deliberations received figures from the Committee's Consultant indicating that 54.6 per cent of applications lodged at the Tribunal under the 1996 Act claimed shock as their primary injury - this represents a potential cost of $47.4 million. The statistical report also showed that in 49 per cent of claims for shock resulting from an assault the only physical injury received was bruising and soft tissue injury.

The potential for a "blow-out" in the costs of the Victims Compensation Fund through the substantial increase in claims for psychological injury, and the anecdotal evidence of cases before the Tribunal, caused the Committee to conclude that the shock category of injury should be reviewed with a view to its deletion from the Schedule of Injuries.

As the report concluded "*The purpose of victims compensation schemes is to ensure that the needs of genuine victims of injury are meet at a reasonable cost to the community.*" This view is supported by Dr. Phillip J. Resnick, an Associate Professor of Psychiatry and Director of Forensic Psychiatry who states:

> *We have a heavy responsibility to assist society in being certain that only the truly sick are given compensation....*
>
> [The Detection of Malingered Mental Illness, Behavioural Sciences and the Law (2) 1984, p 1.]

The anecdotal evidence provided to the Committee during deliberations culminating in the December 1997 report have now been supported by firm statistical information. The Victims Compensation Fund is experiencing a substantial 'blow-out" in costs in respect of shock claims.

1.4 Walsh Report

As stated earlier, the Committee has inquired into, and reported on, complaints lodged by the Walsh family into the practices of a firm of solicitors known as Rakus Solicitors. While taking evidence for this inquiry the Director of the Victims Compensation Tribunal, Mr. P.O'Toole commented that there has been a

"*dramatic increase in the claims of shock*" under the provisions of the Victims Compensation 1996.

The Committee learnt that specified firms of solicitors have increased the number of claims for shock under the new Act by as much as 30 per cent and that the number of claims overall lodged with the Tribunal was increasing quite significantly.

1.5 Statistical Evidence

As mentioned above, at the time of the Committee deliberations in December 1997 the Consultant to the Committee indicated that 54.6 per cent of applications lodged at the Tribunal under the 1996 Act claimed shock as their primary injury - representing a potential cost of $47.4 million.

The 1996 Act has now been in operation for 12 months and the Tribunal has informed the Committee that figures indicate that 51.2 per cent of all applications lodged claimed shock as the primary injury. The Tribunal has further informed the Committee that the average award for shock was $13,204.65. The total potential expenditure for shock claims is $44.1 million if the number of claims to be dismissed is taken into account.

The trends involving shock which have been identified by the Committee were previously hinted at by the Tribunal in evidence in 1997 which indicated that claims for shock were not necessarily made to seek compensation for injury suffered but to obtain compensation for injuries that would otherwise be non compensable under the 1996 Act. Mr. O'Toole, Director of the Victims Compensation Tribunal told the Committee:-

Mr. O'Toole: *In my opinion, and in the opinion of the Tribunal, that is because changes to the 1996 Act exclude soft tissue damage and corporale injuries, law firms have adapted to that exclusion by claiming shock for common assaults.*

Member: *That shows enterprise really, does it not?*

Mr. O'Toole: *That is one way of looking at it...*

Chairman: *...You are saying that there has been a huge jump in the number of shock claims?*

Mr. O'Toole: Yes, there has been a dramatic increase in the claims of shock.

Transcript of Evidence, 27 April 1998

An example of the increase by specific firms of solicitors was provided by Mr. O'Toole:

For example, under the 1987 Act, 9.8 per cent of all applications submitted by the largest firm were for shock. Under the 1996 Act, 34 per cent of all applications lodged by that firm were for shock.

Transcript of Evidence, 27 April 1998

The Tribunal also informed the Committee that 71.6 per cent of all shock applications involved the offence of common assault. In the majority of such cases it can be estimated that the only physical injury is bruising and/or laceration which are injuries which are no longer compensable under the provisions of the 1996 Act.

1.6 Conclusion

The evidence received by the Committee indicates that there are real concerns in respect of the number of shock claims being lodged with the Tribunal. The nature of those claims tend to indicate that a substantial number are for claims that would be excluded from the provision of the new act - that is, claims for bruising or laceration.

The potential expenditure of those claims are in the order of $47 million not including the costs of resources required by the Tribunal to investigate, consider and determine. As Mr. Brahe, said in evidence to the Committee:-

In my view, that area is in urgent need of remedy.

Transcript of Evidence, 10 November 1997

In view of this information, the Committee resolved to conduct a further inquiry into the category of Shock with particular emphasis on:

a. *whether the current categories of shock based on the arbitrary length of suffering are appropriate and equitable;*

b. *whether it would be more appropriate and equitable to replace the*

category of shock with a solatium or some other type of financial acknowledgement of a victim's personal suffering;

c. *whether monetary compensation is the most appropriate method to deal with shock in all instances;*

d. *Any other related matters.*

CHAPTER 2

THE DEFINITION OF SHOCK

2.1 Introduction

It is clear to the Committee that the definition of shock contained in the 1996 Act is too vague to provide an adequate means to assess psychological injuries received by victims of crime.

The statistical and case commentary provided by the Tribunal indicates that the number of claims for shock may continue to increase while the current system of treatment of cases for shock apply. This system is based on a vague definition; generous counselling provisions; no effective monitoring of the reports provided by medical practitioners; and cash compensation paid according to the diagnosed length of time the victim has suffered the injury.

This Committee recognises that there are a significant number of cases before the Tribunal where the victim has experienced a very traumatic event which has produced serious disturbances to the victim's life and and subsequently to the lives of their family. These victims particularly require the help and support of the community. It is debatable whether they need cash payments, however, or rather an appropriate treatment and rehabilitation scheme tailored to their individual needs.

In cases where a victim has suffered a permanent psychological injury a cash payment may be appropriate, in addition to treatment, to pay for any adjustments the victim may have to make to their daily lives. For instance, a victim who suffers from agrophobia may be restricted in their movements outside the house. Avoidance of public transport may be a produce of the disorder and compensation to provide assistance in some form of transportation would be beneficial to the victim.

Dr. Robert Kaplan, a Consultant Psychiatrist, feels that the payment of cash award does not make a person better. A system requiring a victim to enter into a process of being examined by doctors, their conclusions assessed, then convincing authorities of the severity of their illness all to obtain money, does not lead the victim to a cure. Dr. Kaplan suggests that a system leading victims to treatment for their illness or disorder is much more beneficial:

If you had a process where the message was we are funnelling you to treatment, we are not funnelling you to financial compensation, where the issue has been open and uncertain what would happen, in my opinion that would be far better.

Transcript of Evidence, 17 September 1998

2.2 The Historical Perspective

The Committee, as background to this inquiry, investigated the history of compensation for shock, or psychological injury, not only under the present legislation but also under the previous 1987 Act. The Committee was also provided with evidence regarding the difficulties the Scheme has met in endeavouring to ensure that the needs of genuine victims of psychological injury are met at a reasonable cost to the community. This investigation provided useful information to enable the Committee to obtain a clear understanding of the difficulties and the needs of victims of crime to arrive at a balanced conclusion.

Nervous shock has always been recognised in the New South Wales' Victims Compensation Scheme. For example, the *previous Victims Compensation Act 1987* provided compensation for victims who received an injury from *"actual physical bodily harm"*, or who suffered *"nervous shock"* or *"mental illness or disorder (whether or not arising from nervous shock)"* or a combination of any of the above injuries.

The term "nervous shock" is not a medical term but a legal concept developed over decades in both the English and Australian courts dealing with personal injury cases under common law. The term " nervous shock" is believed to have been used for the first time in 1888 in the case of *Victorian Railway Commissioners v. Coultas* (1888)13 App Cas 222, and since then courts have modified the criteria applicable to that term as part of an evolving law relating to psychological injury.

With improvements in the field of psychiatric medicine occurring since the decision in *Coultas* the law has improved and expanded in respect of psychological injury. The term "nervous shock" has gradually come to include a wide range of responses to trauma. The common law however did not, and does not, award compensation for grief or sorrow caused by a person's death, nor for the stress suffered by victims due to an act of violence being inflicted upon them. The distinction between what is recoverable as opposed to what is not recoverable was stated in the leading case of *McLoughlin v O'Brien* [1983] AC 410 at 431:

> *Anxiety and depression are normal human emotions. Yet an anxiety neurosis or a reactive depression may be recognisable psychiatric illnesses, with or without psychosomatic symptoms.. So the first hurdle which a plaintiff claiming damages of the kind in question must surmount has to be establish that he is suffering not merely grief. Distress or any other normal emotion, but a positive psychiatric illness.*

The legal definition and what is or is not included in the concept of nervous shock is too wide to be included in this report. What was made explicit to the Committee was that the basis of the concept may have been appropriate for injuries sustained at work, or in the area of negligence, or as the result of a motor vehicle accident. However, it caused substantial difficulty when applied to criminal compensation cases. This was, and still is, particularly problematic so in cases of sexual assault.

Successive Chairpersons of the Victims Compensation Tribunal have highlighted the difficulties the definition of shock has caused in determining compensation for psychological injuries. Mr.C. Brahe, in his *"Review of the Victims Compensation Act"* (1993) questioned the appropriateness of common law principles when applied to compensation cases under the *Victims Compensation Act*. The primary purpose of common law principles in personal injury cases is to put the person back to the position they were before the incident. Mr. Brahe argued that it would be beneficial to be able to fully compensate victims of crime from the public purse on the basis of a common law assessment without a ceiling on the amount of money. However:

> *..it would be naive and socially irresponsible to pretend that the public purse is a bottomless pit, ...*
>
> *Victims of violent crime should be compensated to as full an extent as is possible, but they should be compensated evenly across the board and not to the detriment of the most seriously injured as is prone to occur at the moment."*
>
> *Review of the Victims Compensation Act, page 36.*

is difficult to accept that common law principles should apply as there was a statutory limit on the amount that could be awarded to victims of crime. In particular he argued that the rules of evidence do not apply to victims compensation determinations and the proceedings are not adversarial.

The application of common law principles in respect of psychological injuries in cases of sexual assaults was criticised in 1994 by the then Chairperson of the Tribunal, Dr. E. Elms who stated:

It does seem somewhat abhorrent that a woman who has been raped or a child who has been repeatedly sexually assaulted for years by her father or stepfather or grandfather, necessarily has to prove that something is wrong with them, and I have...demonstrated the difficulties inherent in the terminology of the Act in this regard. To my mind, this is a classic case where compensation should be awarded for the traumatic experience itself rather than having to prove to a difficult standard the results of that experience.

From seminar on Criminal Injuries Compensation Claims 1992.

2.3 1996 Victims Compensation Act

The *Victims Compensation Act 1996* introduced a number of new initiatives. One significant change was the clarification that common law principles did not apply. The new Act placed a greater emphasis on providing assistance in treatment and rehabilitation of victims of crimes.

The significant changes to the current compensation regime included in the reform proposals are a redirection of resources to place a much greater emphasis on counselling and rehabilitation for victims of serious violence crime and a major overhaul of the means by which applications for compensation are processed.....

Attorney General, Second Reading Speech, 15 May 1996.

As part of the new legislation a new definition for psychological injury, termed "Shock" was introduced.

2.4 Sexual Assault Victims

Parliament recognises the special circumstances of victims of sexual assault and in line with the suggestions by successive Chairperson's of the Tribunal has provided a separate category for victims of sexual assault. Victims of sexual assault are not required to prove they have suffered from "shock" in the legal sense. They must, however, prove that they have suffered a sexual assault according to the definitions contained within the Act. Compensation is payable under a range of awards depending on the seriousness of the act of violence and the resulting trauma experienced by the victim. Victims of sexual assault may alternatively apply for compensation for psychological injury under the injury category of "Shock".

2.5 Definition of Shock

The current definition of shock is contained within Schedule 1 of the Victims Compensation Act 1996. The definition states:

The following applies to the compensable injury of shock:

a. *Compensation is payable only if the symptoms and disability persist for more than 6 weeks.*

b. *The injury comprises conditions attributed to post traumatic stress disorder, depression and similar conditions.*

c. *The psychological symptoms include anxiety, tension, insomnia, irritability, loss of confidence, agoraphobia and pre-occupation with thoughts of self-harm or guilty.*

d. *The physical symptoms include alopecia, asthma, eczema, enuresis and psoriasis.*

e. *Relevant disabilities include impaired work or school or other educational performance, significant adverse effects on social relationships and sexual dysfunction.*

2.6 Duration of Shock

In keeping with the Schedule of Injuries, a specific amount is payable for each specified injury, compensation for shock is payable according to the length of time the victim is diagnosed as having suffered the psychological injury:

For shock lasting:

6 to 13 weeks.....$2,400

14 to 28 weeks.....$9,600

Lasting over 28 weeks (but not permanent).....$18,000

Permanent symptoms and disability.....$48,000

Schedule 1, Victims Compensation Act 1996.

The advancement in research in the field of psychological disorders combined with growing publicity about the nature of disorders, the symptoms and the fact that compensation is available if one suffers from the disorder has lead to substantial increases in claims for shock. This increase or expansion in claims is not limited to victims compensation matters but is of concern in other compensation based systems, such as Work Cover and Motor Accidents Acts although under those systems it is difficult for victims to obtain compensation for psychological injuries.

Ms. Holthouse, Legal Practitioner, NRMA Compulsory Third Party Insurance, stated that while very few claims for shock were pursued to settlement, at the commencement of action each claim had a component of shock.

> *...when you read a medical report produced for the defendant in our case, every statement of claim I suppose is a king of ambit claim. Every statement of claim alleges shock following a motor vehicle accident and many of them allege depression as well.*
>
> *Transcript of Evidence, 17 September 1998.*

2.7 Definition

The Committee received evidence relating to the difficulties that the medical profession have with interpreting the definition of shock and the recommending of compensation subject to the length of time the victim has suffered from shock.

Ms. Louise Morrow a clinical psychologist, employed by Davidson Trahaire which is one of the leading firms of psychologists in the field discussed the problems with the definition of shock:

> *I think that shock is a very broad term; it does not really have a lot of psychological clinical relevance. In terms of the Tribunal, when I see a client, I am more interested in whether the client has a diagnosable clinical disorder. Shock is not that; it really does not make a lot of sense in terms of a diagnosis.*
>
> *Transcript of Evidence, 19 October 1998.*

Concerns have been raised by a number of witnesses before the Committee in respect to the difficulties in defining what shock actually is and whether the legislative definition of "Post Traumatic Stress Disorder" is an adequate one. Professor Warring, President, Psychologists Registration Board told the Committee that:

...a great deal of concern that some people are diagnosing Post Traumatic Stress Disorder without necessarily having the expertise to do so. Then within the academic mental health world, there is a great dispute about whether it is a very good definition any way. In fact everybody suffers from

Post Traumatic Stress Disorder and what you are really thinking about is how long they suffer it.

Transcript of Evidence, 25 November 1997

Similar evidence was given by Dr. Mathew Large a Specialist Psychiatrist, at the Department of Psychiatry at Royal Prince Alfred Hospital, in respect of the definition. When asked whether the definition contained in the Victims Compensation Act was adequate he said he though it was probably too broad:

My definition of post-traumatic stress disorder I would keep quite narrow. For instance, many of the psychological symptoms, anxiety, tension, insomnia, and loss of confidence, they are very broad things that are very difficult to define, but are common in the normal community. Regardless of whether there is a trauma and I think that the results of trauma can be quite broad. The sorts of symptoms that patients who have trauma suffer from are also common in the general community and the difficulty is making sure that there is a causal link between the two and I am saying that is, in a sense, a systematic way in which you can make things too easy, whereby a lot of other problems can be attributed to another event.

Transcript of Evidence, 17 September 1998

The major mental disorder diagnosed as part of the shock definition in the Victims Compensation Act, 1996 has been post traumatic stress disorder. This has been the subject of significant criticism by witnesses before the Committee. This is largely due to the fact that, Post Traumatic Stress Disorder has been subject to critical appraisal in the medical academic field with opinions ranging from strong support of the disorder to others suggesting that it does not exist.

Post Traumatic Stress Disorder is one of the diagnosable disorders within the Part B definitions contained in the Act. It is itself defined in *The Diagnostic and Statistical Manual of Mental Disorders* published by the American Psychiatric Association , called DSM-IV. I order to make a diagnosis of the disorder a medical practitioner must identify specific conditions of the victim to match relevant conditions under categories of the Manual. Similarly the definition of shock contained within the Victims Compensation Act lists a number of possible

symptoms, both psychological and physical which a victim should suffer in order to meet the criteria. Such diagnosis then leads to an award of compensation.

The problems that flow from a definition that requires more or less a ticker box type diagnosis has resulted in what some medical practitioners consider a misuse of Post Traumatic Stress Disorder. There are concerns that this is assisting the so-called "epidemic of post traumatic stress disorder". Dr. Kaplan, a clinical psychologist explained these problems:

> *One of the reasons is that we are in the era of what is called operational psychiatric definitions and this is because of the American diagnostic system that everybody has adopted.*
>
> *Operational definitions is where they give you a list of symptoms that somebody needs and a list of symptoms to be excluded. The problem about that is that it leads to a sort of a cookbook approach and people just tick they have got flashback, tick they have got nightmares, tick they have got phobic avoidance.*
>
> *Transcript of Evidence, 15 September 1998*

Dr. Kaplan further explained that the use of this ticker box system misses out on the fact that it can takes years of experience for a psychologist or a psychiatrist to assess these types of disorders. An experienced professional will get a feel of not only the nature of the disorder but the qualitative effects on the person.

The second aspect of the diagnostic regime is the public's awareness of the necessary symptoms required for a diagnosis of shock.

> *...post traumatic stress has become something of a popular public issue, it has received a lot of support with the public for various issues and there is an assumption that all victims who suffer from any form of abuse or crime get it.*
>
> *Transcript of Evidence, 15 September 1998*

The criteria defining shock is, to a significant extent, reliant on the testimony of the victim. The diagnosis is not, thus, an objective assessment.

> *Dr. Large:* *There are no goal standards so there are areas of subjectivity in that and often disagreement between clinicians as to whether post-traumatic stress disorder is present, or not.*

Chairman: *...you may have a vastly different diagnosis than perhaps another colleague then; is that what you are saying?*

Dr. Large: *Yes.*

Chairman: *Of the same patient?*

Dr. Large. *Yes. It is not a highly reliable diagnosis.*

Transcript of Evidence, 17 September 1998.

2.8 "Epidemic of Post Traumatic Stress Disorders"

The expansion of claims for shock or more specifically Post Traumatic Stress Disorders, has lead to concerns in the medical profession that there is a so-called a epidemic of this disorder.

The Committee heard evidence from a number of experts in the field of Psychological disorders in respect of this problem. For example, Dr. Robert Kaplan told the Committee:

Committee Member: *Doctor, the Victims Compensation Tribunal has stated they are receiving a substantial number of claims for shock, over 52% of all applications claiming shock as their main injury. There are medical articles suggesting that there is a so called epidemic of post traumatic stress disorder. Do you agree there is a so called epidemic?*

Dr. Kaplan: *Absolutely. I use another word I like which I have got from many journals, which is called the promiscuous diagnoses of post traumatic stress.*

Transcript of Evidence, 15 September 1997.

Mr. Ben Hills, Senior Writer with the Sydney Morning Herald prepared an article on this problem called *"Shock Tactics"* (13 June 1998). As part of his background research Mr. Hills spoke to eminent specialists in their fields.

In the article Mr. Hills argued that diagnosing Post Traumatic Stress Disorder is becoming so common and frequent that the term "epidemic" has been applied by a number of critics of the ease of diagnosis.

Committee Member: *It seems to me, from your article and also from what I have heard of the circumstances, that the psychologists are well on the way to rivalling the orthopaedic section of the medical profession as a prosperous profession as a result of this sort of thing?*

Mr. Hills: *It has been called the RSI of the Nineties. It was quite remarkable how RSI, as soon as giant awards stopped coming down the turnpike, magically melted away into the mists of medical history. It really was quite remarkable. I know of that first-hand because there was an absolute explosion of RSI in my workplace. I am quite sure there is quite a strong element of vested interest here.*

Transcript of Evidence, 19 October 1998.

A number of articles in medical journals have referred to the term "epidemic" when discussing, in some cases criticising, the diagnosis of post traumatic stress disorders. Dr. John Ellard, in an article in the Medical Journal of Australia concluded that

> *Post-traumatic stress disorder is one of this generation's epidemics, and the growing wave of enthusiasm for its as a diagnosis may disadvantage many whose suffering is real. The only certainty is that it will be replaced by another epidemic in due course.*
> *(The epidemic of post-traumatic stress disorder: a passing phase?, Medical Journal of Australia, 20 January 1997, Vol 166, pp 84-87)*

It is true that the comments by critics of post traumatic stress disorder such Dr. Ellard are equally counter balanced by proponents of the disorder, nevertheless the Committee has received sufficient evidence to suggest that there are problems with its diagnosis particularly in its context of the definition of shock.

Dr. Ellard supports the evidence of Mr. Hills and argues that post traumatic stress disorder (PTSD) is similar in terms to repetitive strain Injury (RSI) by asking:

> *Will "stress" become the dilemma for psychiatrists that repetitive strain injury (RSI) was for orthopaedic specialists?*
> *(The epidemic of post-traumatic stress disorder: a passing phase?, Medical Journal of Australia, 20 January 1997, Vol 166, pp 84-87)*

2.9 Duration

Evidence was provided to the Committee of what may be termed *"the systematic abuse of the system"* by a number of key players in the area of Shock. This is discussed further in Chapter 3.

A "good" definition of shock was not be offered by any of the witnesses although a outline was provided.

All witnesses agree that it is problematic to award compensation dependent upon the amount of time the victim is diagnosed to have been suffering the injury:

> *...(what) troubles me about the definition of shock and the exponential relationship between compensation and duration of symptoms is that it encourages people to think of themselves as being sick and disabled. It encourages people to think of themselves as sick and disabled for long periods of time you are likely to be sick and disabled.*
>
> *Transcript of Evidence, 17 September 1998.*

The Act tends to financially discourage victims from getting better as soon as possible. The longer the victim suffers from shock the more money that they may r00eceive from the Tribunal. The Committee accepts that in cases of serious permanent psychological impairment substantial amounts of money is quite appropriate. However, in cases such as a young person employed as a bouncer in a Sydney hotel receives a minor physical injury as the result of a pub brawl, it is unlikely that he will be severely traumatised. An award for shock in that type of case will be a bonus.

The increase in money, related to the time the victim suffers from shock, may encourage victims to delay seeking treatment to shorten their suffering:

> *From looking at your schedule of compensation I see that if you are sick for six weeks you get $2,500 but if you are sick for twice as long as that you get four times as much money. I think that if people see that they will take that in.*
>
> *Transcript of Evidence, 17 September 1998.*

Evidence has been provided to the Committee by the Victims Compensation Tribunal that certain solicitors are not sending their clients to a psychologist until after 28 weeks have elapsed from the time of the act of violence. Therefore when the psychologist diagnoses the victim as suffering from shock 28 weeks have

elapsed since the incident and therefore the psychologist must diagnose the shock has having lasted for over 28 weeks. Thus the victim receives compensation for the higher category of shock.

Mr. Peter Kelso, a solicitor who specialises in victims compensation cases appeared before the Committee in November 1997 representing the Law Society. At this time he told the Committee:

> *Mr. Kelso:* *It is reasonably easy to qualify, even under the first category of shock which gives a pay out of $2,400. This is not necessarily the Law Society's view but I would consider extending the threshold, requiring that the shock continue for 14 weeks or eleven 28 weeks before a victim can qualify. I was really surprised to see that the minimum period was six weeks.*
>
> *Transcript of Evidence, 10 November 1997*

The problems with compensation being awarded for shock, not necessarily on severity alone but on the length of time it lasts, was highlighted by Professor Waring in evidence to the Committee.

> *When I look at the definition it comes down to looking at some psychological and physical symptoms and then there will be an amount of money that someone has decided on, that had to do with how long this lasts. To me, that seems like an invitation to actually extend it. Just to get over the barrier to come extent.*
>
> *Transcript of Evidence, 25 November 1997*

2.10 Claiming Shock In Lieu of Physical Injury

The Committee first received evidence in November 1997 from the Victims Compensation Tribunal relating to the developing trends in claiming Shock under the new Act. It was told that while shock was expected to be claimed by victims who have suffered a psychological injury as a result of a serious act of violence there in fact had been a trend for victims to seek an award for shock in place of a physical injury. This was clearly not the original intent of the legislation. Of particular concern to the Committee is the trend to seek an award for shock in cases where the victim would not normally receive an award. Evidence provided during the Committee's inquiry in 1998 have shown that this trend is not only continuing but escalating.

Shock pays a higher amount of compensation than other classes of injury. Solicitors routinely send their clients to a psychologist or psychiatrist for a psychological report irrespective of their injury. If they receive a 'favourable' report they may decide to claim shock, rather than the physical injury as shock will pay the higher award. As is highlighted in the following Chapter, this has contributed to the misuse, or abuse, of the system by a number of key participants in victims compensation.

Of concern to the Committee is the ability for victims who suffered the less serious injury of bruising and lacerations and should not, due to the nature of the incident

and their age and past history, be severely traumatised, being able to claim and receive compensation for shock.

An example provided to the Committee in November 1997 was the case of an applicant for victims compensation receiving compensation for shock in respect of an incident in a Kings Cross night club. The applicant was escorted from the premises after the he threw a glass. The applicant resisted the bouncer and received a punch to his face. After receiving a psychological report indicating that the applicant had a post traumatic stress disorder lasting more than 28 weeks the applicant was awarded $18,000. As the Committee commented in its December 1997 report that while the Tribunal has the power to evaluate expert reports in the light of common sense and the realities of everyday experience, the compensation assessors do not possess the qualifications to refute the expert evidence.

Bruising and lacerations accounted for 36.5% of claims under the 1987 Act and was specifically excluded from the provisions of the 1996 Act. As highlighted by Mr. C. Brahe, the Chairperson of the Tribunal:

> *If an applicant merely has bruising, that is not a compensable injury under the new Act and the applicant would receive nothing for any physical injury. But applicants are now claiming Shock either for six to 13 weeks, 14 to 28 weeks or in excess of 28 weeks and are falling within the Shock category of the schedule. That is the first thing that we are finding.*
>
> *Transcript of Evidence, 10 November 1997*

The Tribunal made the following submission to the Committee for its 1997 report:

> *It would seem that because 'Shock' is so well compensated, many applicants will claim that as the primary injury rather than their physical injury, thus increasing the award. Many solicitors now routinely send their clients for a psychological report irrespective of the physical injury.*

The effect of this trend in shock claims was highlighted by Mr. Brahe, Chairperson of the Victims Compensation Tribunal:

> *If a person has minor burns, under the Schedule he would collect $3,600 if that were the major injury. If he suffered Shock in excess of 28 weeks, he would collect 10 per cent of $18,000 if that were a secondary injury, making a total of $5400. But if he claims Shock as the primary injury, he claims $18,000 plus per cent of the physical injury of $3,600.*
>
> *Transcript of Evidence, 10 November 1997*

2.11 The Cost of Misuse of 'Shock'

In December 1997 the Committee reported the findings of the Consultant employed to determine the likely cost of the 1996 Act. Its report showed that the scenario outlined by Mr. Brahe above costs the Victims Compensation Fund an additional $12,900, or 240 per cent more than if the primary injury was physical. Figures provided to the Committee by the Director of Victims Compensation in October 1998 confirm that the average award for shock is now $13,500.

The Committee at that time received figures to indicate that 54.6 per cent of applications lodged at the Tribunal under the 1996 Act have claimed shock as their primary injury. The Consultant estimated that this represented a potential cost of $47.4 million if all such claims are accepted.

Figures supplied in October 1998 confirm the trend of a substantial number of claims for shock being lodged. It was indicated that 51.2% of claims lodged in the past 12 months are for shock. The Tribunal reports a significantly higher rate of dismissal (38.4% as apposed to a normal figure of around 17%), due in part to the poor applications and medical reports being filed. The Consultant has revised the 1997 figure of $47.4 million to $32.7 million.

The Tribunal estimates that $35.77 million will be spend on shock.

2.12 Higher Award Category of Shock

The statistical information supplied by the Tribunal confirms the largely anecdotal evidence provided to the Committee in 1997 which indicates that over 40% of cases will claim and receive an award shock lasting over 28 weeks. The Tribunal

have stated that 55.4% of awards for shock are in the over 28 week category (award of $18,000).

2.13 Increase in Psychological Injury Claims

On the analysis conducted in November 1997 the Committee received statistical information that psychological injury claims had risen "nearly 22 per cent" when compared to claims lodged under the 1987 Act. This analysis appears now to have been an underestimation of the developing trend.

Mr. O'Toole the Director of Victims Services, informed the Committee in evidence at the hearing of 27 April 1998, that the Tribunal had conducted a comparison of the percentage of claims that were lodged by the five law firms lodging the largest amount of claims.

> *For example, under the 1987 Act, 9.8 per cent of all applications submitted by the largest firm were for shock. Under the 1996 Act, 34 per cent of all applications lodged by that firm were for shock.*
>
> *Transcript of Evidence, 27 April 1998*

Mr. O'Toole told the Committee that this firm is Kelso's Solicitors. He further indicated that Rakus Solicitors, a firm which was the subject of an adverse report of this Committee in respect to its dealing with the Walsh Family, was the second largest as " *under the 1987 Act applications lodged for shock...increased from 7.6 per cent to 37 per cent."* The increase in shock claims is around 30 per cent - not 22 per cent as originally estimated.

The opinion of the Tribunal is that shock is being misused by solicitors to fill the void created by the tightening of the 1996 Act in relation to low level physical injuries:

> *...because changes to the 1996 Act excluded soft tissue damage and corporal injuries. Law Firms have adapted to that exclusion by claiming shock for common assaults.*
>
> *Mr. O'Toole, Transcript of Evidence, 27 April 1998*

The statistical information presented to the Committee indicates such misuse means a substantial cost to the Victims Compensation Fund, and consequently to the taxpayer of New South Wale. The Committee does not doubt that there are genuine claims for psychological injury flowing from quite serious and aberrant crimes. These claims should receive all the support and assistance that the community can offer. It believes however, that the Victims Compensation

Scheme should guard against manipulation of the Schedule of Injuries by exaggerated claims.

2.14 "Pub Brawl" Abuse of Shock

The Committee has previously raised concerns in its Second Interim Report about shock in "pub brawl" type situations. The evidence supplied to the Committee in this inquiry indicates that this area of abuse is still continuing. Awarding of compensation for pub brawls is an instance where the Committee feels the Tribunal must be vigilant to ensure the system is not abused. In respect of "pub brawls" it is worthy to reprint the comment of Professor Waring in respect of injuries received on licensed premises:

> *...when we take into account the individual, there are some people obviously, where a chipped tooth on a Saturday night is almost mandatory. Their life style is such.*
>
> *Transcript of Evidence, 25 November 1997*

2.15 1998 Amendments

Since the Committee commenced its inquiry into Shock, the Attorney General, has introduced into Parliament amendments to the *Victims Compensation Act 1996.* Those amendments include a complete revision of the category of shock. These were passed on 25 November 1998. Comment on the amendments in more detail is to be found in Chapter 7 of this report.

For the reasons outlined in its Second Interim report the Committee recommended that the category of shock be reviewed by the Government with a view to deleting the category altogether except for permanent injuries, homicide, sexual assault and domestic violence. The evidence provided to the Committee during this inquiry further supports that recommendation.

The 1998 amendments to the definition of shock appears to the Committee to go some way to restricting the abuse, or misuse of the shock category of injury. The problems highlighted by this report in respect of the definition of shock indicate the difficulty the Tribunal has in ensuring that only the genuine victims who have received serious physical and psychological injury are compensated under the Scheme.

Further significant evidence was provided to the Committee in respect of the ease of diagnosis of shock and , the systematic abuse of the injury category by some doctors, lawyers and victims. This evidence is outlined in the following Chapter.

In light of this the Committee is concerned that the definition of shock contained in the amendments may not be sufficient to ensure only genuine victims receive compensation for shock in the future as it will always be open to manipulation by sharp practices by lawyers and doctors. As the Chairperson of the Victims Compensation Tribunal, Mr. C. Brahe told the Committee:

> *I...want to expand on my submission to this extent: one can say that perhaps it was a defeatist attitude to recommend that shock be deleted from the Schedule. If I am accused of that, then I plead guilty. But it seems to me that, no matter what the Legislature does, holes will be punched into the question of shock. It is something like the Taxation Act; no matter what amendments are made, the legal profession and the experts will get around it. I think that really is what will happen with shock, no matter how tight it is tried to be made. As the previous witness said, there are vested interests that will try to get around the fact that the definition of shock may be made even more restrictive.*
>
> *Transcript of Evidence, 19 October 1998.*

CHAPTER 3

EASE OF DIAGNOSIS

3.1 Introduction

It is of concern to the Committee that due to a number of factors claims for shock may readily be substantiated by some doctors. It is acknowledged that the definition of shock is vague and causes some confusion as to the requirements of the Act nevertheless there is evidence of doctors who "tailor " reports to meet the criteria of the Victims Compensation Act. Evidence has also been provided to the Committee that shows that the sharp practices by solicitors also contribute to the increase in claims for shock under the 1996 Act.

3.2 Doctors Role

The Committee recognises that the task of the psychologist or psychiatrist in the diagnosing shock is difficult. The definition of shock contained in the 1996 Act is at best vague with little guidance for the psychologist or psychiatrist to provide an objective assessment of his or her patient in terms required by the Victims Compensation Tribunal.

The medical practitioner has a duty towards his or her client or patient. A trust must be developed between doctor and patient for any psychological treatment to be effective. The duty when making a report to the Tribunal, on the other hand, means he/she must be investigating the claims of the victim, or patient, and providing a report based on that objective assessment. This is problematic when the doctor receives little external evidence and must rely on what the patient relates.

The present system of victims compensation may fall down at this point as it is possible to use of the same psychologist to both treat the victim and to provide medico-legal opinion in support of that victims claim for compensation. This may result in a perceived conflict in the duty of care that the psychologist has towards his/her patient.

Dr. Large explained this scenario to the Committee:

> *...when a psychiatrist or psychologist sees a patient primarily as an expert witness his principal duty is a duty of objectivity, he does not have a duty of care and does not have a duty of consent. When a clinical psychiatrist or a clinical psychologist sees a patient his principal duties are that of a*

duty of care...his duty of objectivity and duty of determining causation of the problem that presents him is a lesser duty than his duty of care...

I think that is some way in which it can be very difficult for practitioners to provide an objective testimony as to the true state of the client.

Transcript of evidence, 17 September 1998

The system as it currently operates provides for a victim of crime to see a psychologist or psychiatrist of their choice. The only limiting factor being that their choice must be from a list of such practitioners designated by the Victims Compensation Tribunal. This list is held and maintained by the Victims Compensation Bureau. Further comment will be made in Chapter 5 of this report in respect of the system of designating psychologists and psychiatrists and whether there is any effective monitoring of this system. If the victim has instructed a solicitor to act of their behalf - and 85 per cent of victims do so - then the solicitor may nominate a psychologist or psychiatrist to the victim, who he/she has found to be "sympathetic" in the past.

It is for the psychologist or psychiatrist to make any investigation of the alleged incident that gave raise to the claim of shock, taking into account the history of the patient prior and subsequent to, the crime. The evidence that the Committee has received reveals that in most cases the victim does not always provide the medical practitioner with a copy of any police statements or official statements in regard to the alleged crime. The practitioner is reliant, perhaps over-reliant, on the evidence provided by the patient - a patient who may have been informed by their solicitor of the criteria necessary to ground a claim for shock. The examination and investigation, if any, will normally constitute a forty-five minute interview with the victim.

When questioned as to whether psychiatrists are able to determine whether a patient is exaggerating a claim or providing false symptoms of shock, Dr. Kaplan conceded that this is problematic:.

Let me start off by saying that the official version about all doctors, psychiatrists and psychologists is we are not trained to be lie detectors. Obviously the more experienced you are the more of a clear idea you have of what you are looking out for, I think the better you are at catching it out.

Certainly when you look at some of what I call the industrial presentations, for example the industry with veterans who are coming in well prepared by their organisation what to tell you, they have selected you because you are

on the computer as a soft touch and well you can stop that very quickly.

Transcript of Evidence, 17 September 1998.

Irrespective of the difficulties the psychologists and psychiatrists face in providing objective reports to theTribunal, there was nevertheless evidence provided to the Committee that suggests that many psychological reports received by the Victims Compensation Tribunal are of a poor nature. Dr. Large said he believed that this was due to the nature of the client/doctor relationship and the conflicting roles between treating the victim and providing expert evidence.

I will go on record saying that I think that the vast majority of or a large number of medico-legal reports are of an inadequate quality.

Most reports accept causation and do not critically analyse causation. The patient has symptoms and they have had an accident and there is usually scant attention paid to whether the symptoms were present beforehand and what their natural history has been. The people providing the reports are rarely given adequate documentation to decide on causation. They usually see the patient and that is it.

Transcript of Evidence, 17 September 1998.

The Tribunal echoed Dr. Large's concern's in evidence to the Committee:

*The Act demands that in order to claim compensation the applicant must show that he or she is suffering a symptom and a disability. A large number of psychologists' reports we receive, especially initially, address the symptom only - such as sleeplessness- and do not address the disability that it had on the person's life....I do have copies of applications in which the injuries mentioned are almost identifical in application after application, which casts doubts as to the veracity that they would have exactly the same symptom person after person. .....**Our concern is: is it really addressing the needs of the victim or just ensuring that the compensation claims are successful?** [emphasis added.]*

Mr. O'Toole, Transcript of Evidence, 27 April 1998.

Mr. Brahe distinguished the difficulties faced by the Tribunal in medical reports in respect of shock as opposed to those received in respect of physical injuries.

I think that those people who are writing the reports write them to accommodate the legislation. Instead of writing a report on what they see and on their findings, they have got one eye focused on, " I have got to find shock, and I have got to find it extends beyond six weeks." or

> *whatever the period might be. This is totally different, of course, to the physical injuries. When you walk in you have either got a broken arm, or you have not got a broken arm. But, in the case of the definition of shock, you have either got the mental illness or disorder, you have got the symptoms, you have got the disabilities, or you have not, and you have got them for the fixed period. I think, in the main, lots of reports are written with that legislation in mind.*
>
> *Transcript of Evidence, 19 October 1998.*

The Director told the Committee that in a significant number of instances the report provided by a psychologist or psychiatrist does not correlate with the facts as presented in either the police report or the description of the incident provided by the victim. This can cause doubt in the minds of the Tribunal as to the credibility of the report if the facts as presented in the doctor's report appear to indicate a far more serious level of crime than indicated in the police report.

To illustrate this point Mr. Brahe provided the Committee with an example. The case involved an application for compensation in respect of a domestic violence incident in which the applicant provided the Tribunal with a statutory declaration about the incident and the effect it had on her life. She stated:

> *Since separating with [my* husband] *my quality of life has improved dramatically and I am actually beginning to like myself. I enjoy socialising with new friends which would have been an impossibility for me if I was still with my husband. My psychologist...has supported my decision to remain separated from my husband as I am so thoroughly enjoying my new life away from* [my husband].

Mr. Brahe then read to the Committee part of the psychologist's report in the same case which stated:

> *There has been a marked effect in terms of* [my patient's] *functioning ie, a significant deterioration in her desire to interact socially, and a lack of self-confidence and tolerance when in public situations.*

As Mr. Brahe stated:

> *that* (report) *is in complete contradiction to what she herself said. So she did not get very far with her claim for shock.*

3.3 Case Studies

Mr. Brahe provided the Committee with a number of cases that indicate the problems the Tribunal.

1. Armed Robbery

The first example involves a case of armed robbery where the alleged victim was a co-defendant in the offence. The psychologist was able to diagnose the victim having a Post Traumatic Stress Disorder as a result of the serious criminal offence.

> *In a case that came before the Tribunal...a female in the Newcastle area made an application on the basis that she was the victim of an armed robbery.*
>
> *The facts, briefly, were that a balaclava-clad person came into her father's shop where she was employed, held a knife at her throat, and as a result she handed over some $4,000-odd. It subsequently transpired that the balaclava-clad person was her husband, and that she was a party to this incident in order to feed their drug habit. That girl made an application to the Tribunal. I find that quite amazing. And it was supported by a report from a psychologist in Newcastle who diagnosed a mental illness or disorder.*
>
> *Transcript of Evidence, 19 October 1998.*

This case is not an isolated case.

2. Mr. Brahe quoted a further case of a claimed armed robbery by a victim who convinced a psychologist that he was suffering a diagnosable mental illness or disorder.

> *Along the same lines (*as the above case*) was a case at Hornsby, where a male person in the office was held up, again by balaclava-clad persons, and he lodged a claim with the Tribunal, and we sought - as we always do- a police report. The police report came back indicating that the person, the applicant, had in fact been charged as an accessory to the robbery. But, even so, the particular psychologist was able to diagnose a mental illness or disorder.*
>
> *Transcript of Evidence, 19 October 1998.*

3. Murder Case

Mr. Brahe was questioned in respect of the Walsh case which was the subject of an earlier report by the Committee. In that case the applicant claimed compensation for shock after witnessing a murder, then helped to carry the body down the steps and dump it in a van. The offender drove the van to the Kings Cross area while the applicant cleaned up the blood in the flat.

Mr. Brahe said:

> *He applied as a secondary victim. He was able to show that he suffered a mental illness or disorder, and so the authorised magistrate made an award. I have no doubt that the ordinary person in the street reading about that, and knowing the full facts about his helping to dispose of the body, would reel back on their haunches and say, " What on earth are they doing down there?" And I agree.*
>
> *Transcript of Evidence, 19 October 1998.*

4. Snatch and Grab

A girl was working in a supermarket in Western Sydney when she was approached by a fellow who came out of the supermarket and handed over $5, and then gets his change.

> *He is not armed, and he makes no threats, and he pushes her, reaches over and grabs money from the till. The girl has never worked since..*
>
> *Transcript of Evidence, 19 October 1998.*

The girl obtained compensation as she was able to satisfy a psychologist that she had a mental disorder.

5. Census Collector

Mr. Brahe related the case of a census collector who was taking some answers from a person:

> *He was quite objectionable. There is no doubt about that. He was really quite objectionable. As he took her to the door he..placed his hand in a certain place. She has never worked since. She wanted a great deal of money.*

*In that case we sent her for (*an independent examination) *and the report from the psychologist said, " This woman is compensation orientated." The psychologist went on to indicate that he really did not believe that she had suffered as claimed. That was in direct conflict with the report that she had furnished.*

Transcript of Evidence, 19 October 1998.

3.4 Sharp Practices by Solicitors

The Committee heard evidence that the system of providing reports also involves solicitors who may assist their client in obtaining reports supporting their client's compensation case.

As previously stated the Director of the Victims Compensation Tribunal provided evidence relating to several leading firms of solicitors who deal with a large number of shock claims. Figures supplied indicate that two of these firms during 1997 recorded substantial increases in the number of shock claims lodged under the 1996 Act when compared to claims lodged by those firms under the previous 1987 Act.

One firm, Rakus Solicitors, was subject to an earlier inquiry by this Committee (Complaint by the Walsh Family concerning Rakus Solicitors). A member of that firm, *Ms. Sharon Rakus,* by her own admission, passed herself off as a volunteer at Sydney city Mission for her own significant financial gain. Whether or not she actively encouraged victims of crime to believe that she was an employee of the Sydney City Mission, she used the Mission's premises in order to conduct her law business for a period of two and a half years. By doing this, she was ensured a constant stream of clientele.

The Tribunal provided evidence that Rakus Solicitors claims for shock rose from 7.6 per cent of claims to 37 per cent of claims under the 1996 Act. There is no doubt that this firm obtained significant financial gain through this practice.

Mr. O'Toole, informed the Committee that the two largest firms of solicitors would refer all their applicants to one particular psychologist, from the information received by the Tribunal it is apparent that a system of exploiting the system of victims compensation, specifically in the area of shock has developed. As Mr. O'Toole has stated:

...it is almost considered as part of the process: complete this application, go to the psychologist and lodge a claim.

Transcript of Evidence, 27 April 1998.

This was supported by Dr. Large who, when relating to the Committee the conflict of duty of care of a psychologist or psychiatrist, stated that the definition provides financial incentives for the victim to exaggerate their symptoms, in some cases he considered *"straight malingering"*. Dr. Large also said he believed that if a victim, or patient perceives that there is an on going relationship between solicitors and doctors then it is easy for the patient to provide the information so sought:

> *..if there is perceived to be a system that people in authority are working within so if your solicitor and your doctor clearly have a relationship and they have done this lots of times before, I think patients know that and the whole process becomes very normalised as a culturally normal thing to do and that in a sense there is even a degree to which there are some dangerous ideas involved.*
>
> *Transcript of Evidence, 17 September 1998.*

As an example Dr. Large stated that following the *"RSI epidemic"* in the 80's there was alarm about getting RSI. Notices were placed within the work place saying how dangerous RSI was and to stop work if symptoms developed. Mr. Large felt a lot of people become self-deluded about the cause and effect of RSI and became deluded into thinking themselves as being sick and disabled.

Dr. Kaplan agreed that there is a system of applying for compensation, see a solicitor, get a referral to a particular doctor, obtain favourable report and compensation is provided. As Dr. Kaplan said:

> *The minute you get third parties involved in a process there is an enormous shaping and reinforcing effect on how people behave, how they deal with a system and how they react.*
>
> *Transcript of Evidence, 17 September 1998.*

Dr. Kaplan further explained that:

> *Some psychologists as well as psychiatrists simply say that if you look at some of the issues of post-traumatic stress you have to have nightmares and flashbacks and yet if you ask people, tell me about the nightmares, they will tell you about the nightmares which are unrelated to the trauma. You will have people with head injuries who had amnesia for half an hour before the accident and two hours afterwards who will tell you that they are having flashbacks about the incident, which is neurologically impossible.*
>
> *Transcript of Evidence, 17 September 1998.*

The statement by Dr. Large is indicative of how a system with a financial impact upon the victim will affect that persons response to medical assessments:

> *...if there is a definition of shock that, however you state it, has a financial end point then there will be people who jump through the hoops. There will be a spectrum of how people do that, ranging from just a little bit of exaggeration to a sort of twilight state in a sense of between exaggeration and straight malingering or straight deliberate fabrication.*
>
> *Transcript of Evidence, 17 September 1998.*

The system currently operating in victims compensation indicates that there are many cases in which compensation is awarded for psychological injury when it may be that the person does not have symptoms. The system of solicitors targeting particular doctors that they know will provide the answer they are looking for, by providing the victim with a copy of the symptoms, or at the very least questioning them about the symptoms that the doctor will be looking for, does appear to defeat the compensation system that is designed to provide compensation to those victims seriously injured by an act of violence.

As Dr. Kaplan told the Committee:

> *Anybody who is determined and convincing and articulate can con you but on the other hand , if people take the trouble to look into it, you can usually see through it.*
>
> *Transcript of Evidence, 17 September 1998.*

If solicitors are targeting those doctors who do not take the trouble to do the necessary investigations of the patients claim then exaggerated or fabricated claims may be compensated.

3.5 Case Study

An example of the problems that the Tribunal has in respect of the veracity of psychological reports, and the present system of monitoring such reports, is the structure in place in one solicitors firm where a psychologist is resident within the solicitors office.

The second largest firm of solicitors, in terms of claims lodged at the Victims Compensation Tribunal, has for the past 12 months leased an office within the firm's premises to a qualified clinical psychologist. That psychologist now provides nearly all the psychological reports for clients of the solicitors. There is no doubt

that this arrangement is an example of what Dr. Large describes as a relationship existing between *"your solicitor and your doctor"* leading to a ready scene for exaggeration or deliberate fabrication.

It is interesting to note that the number of claims for shock lodged by this firm of solicitors has increased from 9.8 per cent of claims under the 1987 Act to 34.4 per cent of claims under the new Act. The second largest increase in shock claims recorded by the Tribunal.

Concerns were expressed by Mr. O'Toole this type of conflict:

> *In relation to....(the) arrangement, even though Mr...has written to me advising that all clients will be made aware that the psychologist is not a staff member of .....and that the client is free to use any psychologist of their choice, I am firmly of the opinion that a situation similar to that of Rakus's positioning within the Sydney City Mission will eventuate. That is, in their traumatised and confused state, clients will not absorb what they are being told or shown by ..in the form of disclaimers, etc and will presume* ***that seeing ..... is part of the standard process of claiming for victims compensation. [emphasis added].***

Mr. Brahe supported the view of the Director:

> *Chairman:* *In its report on the Walsh family, the Committee heard that the firm of solicitors Rakus worked at the premises of the Sydney City Mission and that victims who attended were confused about who actually employed Rakus. Would there not be the same confusion if the psychologist were working in the premises owned by the firm of solicitors?*
>
> *Mr. Brake:* *Absolutely. I see that as a grave perception of anyone coming to see Mr. X the solicitor then being told, " Well, just go round to the next door office and see our friendly psychologist." I mean, there are a number of firms of solicitors who use specific psychologists and specific psychiatrist, but this is taking it one step further to have the office of the psychologist within the same office areas as the solicitor."*
>
> *Transcript of Evidence, 19 Octrober 1998.*

The effect of a close relationship between medical practitioner and legal practitioner was raised in the Committee's hearings in November of last year and

mentioned in the Committee's Report tabled in December of that year. Succcessive Chairpersons of the Victims Compensation Tribunal have stated in their Annual Reports that it is to easy for solicitors to obtain sympathetic psychological reports and get these past the Tribunal as they meet all the criteria of the Act. Dr. Elms, the then Chairperson of the Tribunal, stated in the Annual Report of 1993-94, that some medical experts in the field of mental health were tailoring their reports to meet the criteria of the Act *"[They] regard their brief as being solely to get the applicant as much compensation as possible."*

Mr. Brahe, Chairperson of the Tribunal, in the Annual Report of 1994-95 reiterated this when he stated:

> *There is not the slightest doubt that in many instances psychological/psychiatric reports are tailored to meet Section 3....It is clear that there is a core group of psychologist/psychiatrists who are targeted by solicitors as being favourable to applicants."*
>
> *Victims Compensation Tribunal, Annual Report, 1994-95, p.8.*

Witnesses before the Committee during this inquiry have used varying terms to describe this phenomena. Dr. Large talked about *"improper relationships"* between solicitors and medical practitioners. Dr. Kaplan stated that organisations who refer patients to certain psychiatrists for medico-legal reports in compensation matters have *" selected you because you are on the computer as a soft touch ....".*

Ms. Morrow told the Committee that she had heard of instances of patients attending diagnostic sessions with copies of shock definitions.

> *Member:* *..have you become aware of, or are you aware of, instances where legal representatives .....that have given their clients definitons prior to those people coming to see your organisation?*
>
> *Ms. Morrow:* *Yes...One of my colleagues has had clients come in with photocopies of the DSM4 diagnostic categories; and, yes, that is a matter of concern.*
>
> *Transcript of Evidence, 19 October 1998.*

3.6 Investigation of Claims

The Tribunal does have the power to investigate psychological reports by seeking an independent evaluation from another psychologist or psychiatrist. However it

has always been difficult for the Tribunal to refer a large number of claims for independent evaluations for administrative cost reasons. It is also problematic to review cases in which people have been traumatised as it may compound genuine victims suffering.

Ms. Holthouse a legal practitioner, with NRMA Compulsory Third Party Insurance, informed the Committee that her firm, and others in the industry, have found it necessary to investigate a lot of claims lodged for shock. She said that it was difficult to distinguish genuine claims from the exaggerated claims for shock. It is noted that in the Motor Accidents Act victims must prove they have suffered an actual psychological or mental illness.

Ms. Holthouse suggested that the obtaining of an objective assessment from a psychologist connected to a regime of treatment and rehabilitation has been found by the NRMA to be very effective. The emphasis on treatment and rehabilitation program is effective for the injured victim and also finds out *"the people who have been guilding the lily."*

Mr. Brahe highlighted the difficulties with independent evaluations if the applicant's psychologist adheres to their original report. It is a matter of one expert against another expert:

> *Where we do ask for (*an independent evaluation) *and where those reports substantiate our own gut feeling that there is no injury, those reports are being sent back to the solicitors for their comments. They then send the reports to the psychologists who wrote the original reports, and those psychologists adhere to their original positions of diagnosing injury. .....we are faced with considering two reports against one.*
>
> *Transcript of Evidence, 19 October 1998.*

Successive Chairpersons of the Tribunal have recommended a tightening of the area of psychological injuries particularly a system of scrutinising reports claiming large amounts of counselling.

3.7 Conclusion

The evidence suggests that claims for compensation that would normally not be compensable are receiving awards from the Victims Compensation Tribunal. The vagueness of the definition of shock contained within the 1996 Act contributes to a system which is too easily open to abuse. There appears to be a developing trend of reports being written by favourable psychologists/psychiatrists targeted by solicitors to assist victims.

How many such reports are being prepared, presented t, and paid by the Tribunal is difficult for the Committee to identify. Further review of this area is needed.

CHAPTER 4

TREATMENT AND REHABILITATION

4.1 Introduction

Witnesses appearing before the Committee questioned whether the payment of compensation for psychological injury in less serious crimes was most beneficial for victims of crime. Evidence presented suggests that offering victims rehabilitation is more appropriate.

Evidence was provided that a system of providing money may act as an encouragement for some victims to exaggerate their injury, and in some cases for fabrication of injuries. Further, it is difficult for the Tribunal to distinguish between those genuine victims and those who are exploiting the system.

4.2 Financial Gain

Professor Waring told the Committee in his evidence before it on 25 November 1997 that it *"surprises me the number of people who get well just after they get their cheque."* One editorial published in the British Journal of Hospital Medicine, June 1987 (p 485) titled "Post-Traumatic Stress disorder: does it clear up when the litigation is settled?" the author suggested that while the evidence does not conclusively support the proposition. Nevertheless methods of paying compensation and the lengthy legal process does create a climate where some cases would involve exaggeration on the part of the victim. Other articles and studies disagree as to compensation without treatment may tend to encourage exaggeration of injuries.

4.3 Improved System of Treatment

It is clear to the Committee that the system of assistance to victims of crime who have suffered a psychological injury needs to be reviewed and refined. The amendments introduced and passed in November 1998 go some way to addressing the needs of victims. It is the Committee's view that further investigation and refinement is required.

The purpose of victims compensation schemes is to ensure that the needs of genuine victims of injury are met at a reasonable cost to the community. The Committee previously recommended that the category of shock be reviewed with a view to deleting the categories of Shock other than for permanent injuries. Evidence provided to the Committee in this inquiry suggest that it is more beneficial to the victim if the compensation provided is more in the nature of

treatment and rehabilitation with financial assistance for pain and suffering being provided for those victims who are suffering only long term injury.

Dr. Large suggested that an improved system should separate treatment from assessment and that decisions being made about treatment should be made on the basis of adequate information. The system should ensure payment is made only for treatment that seemed to work for the benefit of the victim and not a general payment for counselling that was not monitored or reviewed.

Ms. Holthouse suggested the model used by the NRMA in which:

> *...we set in place a treatment regime in conjunction with our rehabilitation people. If someone is alleging that they require treatment, we work that out with the treating doctor. After a period of time we will ask the treating doctor to report on the state of the mental health of that person and we will get a response from the doctor.*
>
> *If the doctor is saying that this treatment is not achieving anything , then we will stop paying for it. We will ask whether there is some other method of more appropriate rehabilitation*
>
> *Transcript of Evidence, 17 September 1998.*

Whether the treatment involves counselling only, or a combination of other forms of therapies, is something that needs further investigation. Other witnesses have suggested that the provision of a set number of counselling hours with little monitoring or review is not sufficient.

The proposal for the Fund to provide treatment rather than compensation to victims of psychological injuries was also suggested to the Committee by the Chairperson of the Tribunal, Mr Brahe:

> *Chairman:* *In your view, would it be more appropriate to delete shock altogether from the scheme and perhaps provide access to counselling and treatment?*
>
> *Mr. Brahe:* *That would be my view, Mr. Chairman. I would like to see shock removed from the Act and some sort of rehabilitation program be introduced, such as some counselling or some follow-up treatment or whatever.*
>
> *Transcript of Evidence, 19 October 1998.*

The current system provides counselling as well as compensation for pain and suffering. The system of counselling does provide valuable assistance to some victims of psychological trauma. There is evidence however that victims may require more than counselling in the form of other therapies including medication. Professor Waring stated that anti depressant medication can assistant victims who are diagnosed with a major affective disorder, while other treatments such as Cognitive Behaviour Therapy can provide valuable assistance. Any treatment and rehabilitation regime would need to meet the victims psychological needs and be subject to on-going review by either the Tribunal or Victims Bureau.

Ms. Holthouse explained the general scope of the treatment regime used in Motor Accidents Compensation:

> *..we...authorise ongoing treatment, particularly with very seriously injured people.....it isnot necessarily medical treatment all the time but might be nursing or other care and other sorts of rehabilitative treatment, speech therapy or whatever it may be.*
>
> *Transcript of Evidence, 17 September 1998.*

The Victims Compensation Tribunal will pay for any medical treatment provided prior to the determining of the compensation application and may pay for proposed treatment undertaken after the award is made. Once a compensation determination is made there is no provision for re-opening the case and making additional payment for medical needs. Such a system of re-opening cases would be difficult to operate and be expensive and time consuming to the Tribunal. If, on the other hand the system provided a scheme of providing a treatment and rehabilitation regime designed to meet the needs of the victim in place of a compensation award, then money saved from the reduction of the shock category could be utilised for such beneficial treament.

4.4 Conclusion

The evidence suggests that the provision of compensation awards, with a counselling regime that does not have a monitoring component, may not be the most beneficial and cost effective method to assist victims of crime.

As previously stated the purpose of victims compensation schemes is to ensure that the needs of genuine victims of injury are met at a reasonable cost to the community. Abundant evidence was provided that treatment with the view to the rehabilitation of the victim is more appropriate than the provision of compensation awards.

It is the Committee's view that a system of treatment and rehabilitation for victims suffering psychological injuries in place of compensation awards needs further investigation. Any investigation would require a review of such systems used in other compensation jurisdictions and require a financial analysis of the cost benefits of any such scheme.

CHAPTER 5

COUNSELLING

5.1 Introduction

The Committee heard evidence and received submissions in respect of suggestions to reform the area of psychological injury. A number of those comments and suggestions also involved the provision of counselling under the Victims Compensation Act 1996.

While the Committee's primary focus was on compensation for Shock and the issue of counselling was, and is, a secondary issue. The comments made to the Committee in respect of counselling, however, confirm the need for a review of the counselling arrangements. The Parliamentary timetable does not provide sufficient time for this Committee to fully investigate counselling, so it is recommended that a further inquiry into counselling should be conducted at a later stage.

The comments made in respect of counselling are of importance and the Committee feels that a brief section on counselling should be included in this report.

5.2 Concerns About the Current Scheme

The Committee reported on counselling arrangements in its second interim report, *The Long Term Financial Viability of the Victims Compensation Fund.* The Committee recommended that the provision of counselling to victims of a crime which does not involve homicide or sexual assault be capped at four to six sessions except in exceptional circumstances. The accreditation Board should determine when such circumstances exist.

The Committee at that time had a number of concerns in particular the potential for significant growth as the scheme matures. Those concerns were:-

- increased familiarity of solicitors and victims of crime, through increased publicity in respect of the availability of counselling. At that time figures indicated that 33 per cent of applications to the Tribunal had applied for counselling. Current figures suggest this has not significantly increased.

- the link between receiving on-going counselling and applications for nervous shock claims is evident. It is in the best financial interests of

applicants, and solicitors on behalf of their client, to demonstrate serious post traumatic stress through long term counselling. The previous chapters of this report have supported this concern.

- the current system provides a direct financial incentive for counsellors to recommend the maximum amount of counselling for their clients. This concern has been supported by evidence provided by the Tribunal. During that inquiry the Director of Victims Services, Mr. O'Toole, provided evidence of the vested interests when asked whether he believed that some of the psychologists substantially benefit from the referrals that they received from particular solicitors.

- there appears to be no regulatory structure to ensure quality of service delivery and to protect against possible over servicing, fraud or other types of professional misconduct. This leaves the Tribunal vulnerable to both misuse by counsellors and actions launched by dissatisfied applicants.

5.3 Capping of Counselling Sessions

An option for reform recommended by the Committee in December 1997 was the capping of counselling sessions to either 4 or 6 sessions for cases other than homicide and sexual assault. The primary reason for this recommendation was evidence provided by psychologists along with details of the number of counselling sessions available in other compensation schemes.

This evidence has been re-inforced to the Committee during this inquiry. Dr. Large suggested that 20 sessions was probably far too many in most instances:

> *Twenty sessions is a lot of sessions, actually. I think that you often know whether the outcome is going to be reasonable before then.*
>
> *The mean number of attendances for a patient for a psychiatrist is actually quite small, it is only about 5.7 sessions across the whole population, and that includes people who have serious life time mental illnesses such as schizophrenia and bi polar disorder.*
>
> *Transcript of Evidence, 17 September 1998.*

Professor Waring stated that the number of sessions usually provided is six hours, while Ms. Patrick of the Sydney City Mission stated that they provide victims of crime with an average of about five sessions.

5.4 Monitoring of Counselling Service

Irrespective of the number of counselling sessions provided there is a need for a strong monitoring system of the type of counselling provided and for some form of peer review of counselling provisions and accompanying reports.

The Victims Compensation Act 1996 allows for counselling to be provided by "*a professional counsellor chosen by the victim from a list of counsellors designated by the Director.*"(Section 21(10)). In respect of medico-legal reports there is no system of designated psychologists or psychiatrists from which the victim must choose. For instance, the victim may seek a report from any suitably qualified medical practitioner.

The practical reality is that most applicants seek a report from a person from whom they are also seeking counselling under the Tribunal's counselling system. The effect of this is that there is a strong financial incentive created for the medical practitioner to assist their patient in both obtaining maximum counselling hours and compensation. As Dr. Large stated there needs to be a clear delineation between those doctors who are providing the treatment and those who may diagnose the injury. This prevents the "vested interests" component of the system from having an influence over the scheme.

Dr Large suggested that the present counselling system needs to be reformed with a system that relies on a strong monitoring function.

> *..it is as much how you administer it* (the system of counselling) *as how you would define it.....I would separate treatment from assessment. I would make sure that the decisions that were being made were on the basis of adequate information. I would make sure that you only paid for treatment which seemed to work and you would have to have some evidence of that. There is no point in paying for treatment that does not work. I would have some way of targeting the people who are exploiting the system, some way of targeting the people who have improper relationships.*
>
> *Transcript of Evidence, 17 September 1998.*

The Department of Veteran Affairs provides a Vietnam Veterans Counselling Service for returned servicemen. That Service provides counselling to veterans and their families particularly Vietnam Veterans and Peace Keepers and includes family members. Counselling is provided throughout the State in the form of

employed counsellors for the Sydney Metropolitan Area and contracted counsellors in the Country.

Country counsellors are required to enter a contract with the Department, such contract provides a number of considerations concerning the method of counselling and how they treat their clients. All reports prepared by the counsellors are monitored through a review by a psychologist employed full time by the Department. If there are concerns about the number of sessions being provided, or the type of treatment provided the psychologist will contact the counsellor to discuss the problem.

Ms. Munro a Social Worker with the Service said she believed that the strong monitoring of the system made for better outcomes:

> *Committee Member:* *Do you think that your service provides an adequate or better than adequate service?*
>
> *Ms. Munro:* *I really think we do, because of the quality assurance aspects of it, because we are demanding reports every five sessions, and because we actually look at those reports.....we phone the contract counsellor, or we will actually go and visit them if we need to.*
>
> *Transcript of Evidence, 19 October 1998.*

Every potential counsellor is assessed by the Department prior to being given a contract. This includes checking their backgrounds and experience and visiting their premises to see how they operate; questioning them as to what type of counselling models they use; establishing how available they are and what conditions for counselling they have to offer their clients.

Once contracted the Service regularly visits the counsellors premises on at least three occasions each year.

5.5 Conclusion

Amendments to the 1996 Act in respect of counselling were introduced into Parliament in November 1998. The details and result of those amendments are the subject of the next Chapter.

The Committee however re-affirms the recommendation in its Second Interim Report that counselling sessions should be capped at 4 or 6 sessions with the

ability to obtain further counselling in exceptional cases. The evidence provided to the Committee supports that in general only 6 sessions are required.

The Committee further recommends that a system of monitoring, or peer review, is required of designated counsellors, and of practitioners who are supplying medico-legal reports. Further, those practitioners who supply medico reports should not provide the counselling services to the victim who is subject of that report.

It is the Committees view that a similar type of monitoring system is necessary for the appropriate functioning of the counselling provisions of the Victims Compensation Act, 1996.

CHAPTER 6

1998 AMENDMENTS AND CONCLUSION

6.1 Introduction

Since the Committee commenced this inquiry the Attorney General has introduced into Parliament the *Victims Compensation Amendment Bill 1998.* The Bill passed all stages on 27 November 1998.

6.2 New Category For Psychological Injury

As part of that Bill the Schedule of Injury is to be amended by replacing the category of shock with a new injury category of psychological or psychiatric disorder. Statutory compensation may still be obtained for injuries of that kind in respect of injuries suffered in, and covered by, the global categories of sexual assault and the new category of domestic violence. The award range is to be:-

Category 1 : chronic psychological or psychiatric disorder that is moderately disabling.....$5,000-$15,000.

Category 2: chronic psychological or psychiatric disorder that is severely disabling.....$30,000 - $50,000.

During the second reading debate, the Hon R. D. Dyer, stated that to address the issues raised by the Select Committee concerning monetary awards for psychological injury the Bill provides for replacement of shock with a new category of psychological injury.

> *The new injury category will require diagnosis of a long-term psychological injury which results in severe impairment of the person's ability to function in their usual day to day activities. To claim for this injury an applicant will be required to undergo an independent medical assessment.*
>
> *Second Reading Speech, 22 October 1998.*

The Committee welcomes this amendment to the victims compensation scheme. However the Committee also believes that there is a need to monitor the operation of the new provision of psychological injury. The evidence provided to the Committee during the course of this inquiry and detailed in this report suggests that it is difficult to provide an accurate definition that restricts the ability of interested parties from tailoring their reports to meet the criteria set in the Act. As stated by the Chairperson of the Tribunal no matter what definition is inserted into

the *Victims Compensation Act "the legal profession and the experts will get around it."*

The requirement that the applicant for compensation obtain an independent medical assessment by a doctor who has been designated by the Director of Victims Compensation will provide a form of monitoring and review of the system. The Committee, however, has some concerns in respect of how that designated doctor list will operate. Further, information is required to ascertain whether or not the monitoring role of the Director is sufficient to ensure only those doctors who have the necessary qualifications and ability to provide objective assessments are included on the list.

The Committee is also concerned to ensure that the Director has a strict regulatory control of the designated doctors and if they do not perform satisfactorily they are should be removed from the list. The principles of natural justice must be observed at all times.

6.3 Domestic Violence

A new category of injury of domestic violence is to be inserted in the Act, with an award range of $2,400-$10,000.

During the passing of the Bill an amendment was moved and carried that altered the definition of domestic violence to read in similar terms to the definition of domestic violence contained in the *Crimes Act, 1900.* It is the Committee's view that this definition is much broader than the one originally moved and may have the effect of expanding the range of potential applicants to the Scheme.

The Committee recommends that further monitoring of the scheme in respect to the injury category of domestic violence is required.

6.4 Counselling

The amendment Bill contained provision to reduce the number of available counselling sessions from 20 hours to 6 hours (not including the initial two hour approved counselling). This is in line with the Committee's recommendation of December 1997.

An amendment was moved to this provision with the effect that the number of Counselling hours available under the Victims Compensation Act is to remain at 20 hours.

The Bill has expanded the category of the 'type' of victim who may apply for, and be granted, counselling. Clause 10 provides that a person who is a victim of an act of violence but who would not receive compensation under the Act is allowed to apply for counselling. This expanded category may have a significant effect on the financial viability of the victims compensation Fund.

The Committee is of the view that a further review of this provision should also be undertaken to gauge the effect on the Fund.

6.5 Conclusion.

This report is the culmination of a comprehensive process of investigation and collection of evidence in respect to the awarding of compensation for psychological injuries under the Victims Compensation Scheme. This inquiry follows, and compliments, the conclusions reached in the Committee's Second Interim Report, tabled in December 1997.

The Committee indicated in that report that as the provisions of the 1996 Act had only been in operation for a short time it would be advantageous to review shock when more statistical information became available. The evidence received by the Committee during this inquiry substantiated the concerns expressed in the Second Interim Report.

The amendments contained in the *Victims Compensation Bill 1998* creates a new injury category of psychological or psychiatric disorder and includes provisions for a form of monitoring of the medical reports diagnosing the new category. As this report suggests, there is concerns that it is difficult to provide an accurate definition, or a system of review, that restricts the ability of interested parties from tailoring their reports to meet the criteria set in the Act.

The Committee believes that its inquiries have provided significant evidence of the difficulties with the Victims Compensation Scheme particularly to the long term financial viability of the Victims Compensation Fund. There are a number of areas of the scheme, particularly in respect of the new amendments, that will require further review to monitor their impact on the Fund.

It is the Committee's recommendation that there should be a future parliamentary review of the new category of psychological injury particularly in respect to the provisions for the monitoring of medical reports supplied by designated medical practitioners. A review would also be advantageous to review the provision of counselling services, the expanded category of victims who may access counselling and review the new powers given to the Director of Victims Compensation to suspend or revoke approved professional counsellors.

RECOMMENDATION:

That the New South Wales Parliament continue to monitor and review the long term financial viability of the Victims Compensation Fund through its Committee process, with emphasis on the possible misuse of the new category of psychological or psychiatric injury, the provision of approved counselling, and any other specified area.

APPENDIX 1

LIST OF SUBMISSIONS

LIST OF SUBMISSIONS

Report: Inquiry Into Psychological Injury - Shock -

Sub. No.	Name-Position	Organization/Address
S1	Mr. C. Brahe Chairperson	Victims Compensation Tribunal
S2	Shirley McHugh	
S3	Mrs. P. Wagstaff	
S4	Prof. Peter Thursby	Australian Medical Association
S5	Dr. Carolyn Quadrio Director	Mental Health Services
S6	Maureen Patrick Manager, Counselling Services	Sydney City Mission
S7	N.R. Cowdery QC Director of Public Prosecutions	Director's Chambers
S8	Supt. J.K. Laycock Local Area Commander	Fairfield Local Area Command
S9	Mr. Sam Garkawe Senior Lecturer	Southern Cross University
S10	Mr. Peter Kelso	Kelso's the Law Firm
S11	Garry Morton Consulting Psychologists	Kogarah, NSW 2217

LIST OF SUBMISSIONS

Report: Inquiry Into Psychological Injury - Shock -

S12	Margaret J. George	16 Ridge Street Nambucca Heads NSW 2448
S13	Lynnette Dorn Acting Director-Gen	Department for Women Woolloomooloo, NSW 2011
S14	Brian Robertson Director	State Debt Recovery Office Sydney South NSW 1235
S15	John Dietrich	Attorney's General Department
S16	Roger F. Peters Psychologist	
S17	Mr. R. K. Heinrich President	The Law Society of New South Wales

APPENDIX 2

LIST OF WITNESSES

Report: Inquiry Into Psychological Injury SHOCK

List of Witnesses

DATE	NAME
20 August 1998	**Mr Philip O'Toole** Director Victims Compensation Tribunal **Mr Brian Robertson** Director State Debt Recovery Office **Mr Brian Robert McFadyen** Operations Manager General Recoveries State Debt Recovery Office **Mr. Frank Ticehurst** Legal Office Land Titles Office Mr. Douglas Humphreys Manager, Criminal Laws Legal Aid Commission of NSW
17 Sept. 1998	**Dr. Mathew Large** Head of Psychiatry Royal Prince Alfred Hospital **Ms. Esobel Holthouse** Sr. Corporate Lawyer NRMA Insurance Company **Dr. Robert Kaplan** Psychiatrist The Liaison Clinic

19 Oct. 1998	**Ms. Louise Morrow** Clinical Psychologist Davidson Trahiare **Mr. Ben Hills** Journalist Sydney Morning Herald **Mr. Cec R. Brahe** Chairperson Victims Compensation Tribunal **Ms. Virginia Munro** Social Worker Vietnam Veterans Counselling Services

APPENDIX 3

MINUTES OF MEETINGS

Minutes of Meeting of the
Joint Select Committee on Victims Compensation
9:00 - 1:00 p.m., Thursday, 20 August 1998
Room 814/815 Parliament House

Present:

Mr Stewart (Chairman)

Legislative Assembly	Legislative Council
Mr. J. Anderson	
Ms. M. Andrews	Hon. R. Jones
Mr. W. Merton (late 10:30)	
Mr. G. Peacocke	

Apologies
Hon. J. Burnswoods, Hon M. Gallacher, Hon. B. Vaughan

In Attendance
Ms. C. Watson (Director), Ms. G. Magno (Assistant Committee Officer), Mr. K. Ferguson (Consultant), Ms. Meryl James (Research Officer)

1. Public Hearing at 9:00 a.m.

The Chairman opened its proceedings for a public hearing at 9:00 a.m.

Mr. P. O'Toole, Director, Victims Compensation Tribunal was welcomed by the Chairman. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Mr. Robin G. Humphrey, Manager Restitution Section, Victims Compensation Tribunal, took the oath and acknowledged receipt of summons. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Mr. Brian John Robertson, Director State Debt Recovery Office, took the oath and acknowledged receipt of summons. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Mr. Brian R. McFadyen, Operations Manager, General Services, State Debt Recovery Office, took the oath and acknowledged receipt of summons. The Committee questioned the witness. Questioning concluded, the witness

withdrew.

Mr. Frank K. Ticehurst, Principal Legal Officer, Land Titles Office, took the oath and acknowledged receipt of summons. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Mr. Douglas John Humphreys, Manager, Criminal Law Branch, Legal Aid Commission of NSW, took the oath and acknowledged receipt of summons. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Dr. Peter Macdonald, Member for Manly was welcomed by the Chairman. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Ms. Jeanette Gay Schubert, took the oath and acknowledged receipt of summons. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Ms. Jody Wauchope, Researcher for Dr. Macdonald, took the oath and acknowledged receipt of summons. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Public Hearing Adjourned At 1:10 p.m.

2. Deliberative Meeting

A deliberative meeting was opened by the Chairman at 1:15pm.

Shock
The Committee to hold an inquiry into the subject shock moved by Ms. M. Andrew, seconded Mr. J. Anderson.

The Committee agreed to advertise for submissions and seek medical evidence from Psychiatrists and Psychologists.

The Committee agreed to seek Crown Solicitor's advice in respect of caveats, registration orders and the bankruptcy provisions.

3. The Committee adjourned at 1:25 p.m.

Minutes of Meeting of the
Joint Select Committee on Victims Compensation
9:30 - 1:00 p.m., Thursday, 17 September 1998
Room 814/815 Parliament House

Present

Mr Stewart (Chairman)

Legislative Assembly	Legislative Council
Mr. J. Anderson	Hon. M. Gallacher
Ms. M. Andrews	Hon. J. Burnswoods
Mr. W. Merton	Hon. B. Vaughan
Mr. G. Peacocke	

Apologies
Hon. R. Jones

In Attendance
Ms. C. Watson (Director), Ms. G. Magno (Assistant Committee Officer), Mr. K. Ferguson (Consultant)

1. **Public Hearing at 9:30 a.m.**

The Chairman opened its proceedings for a public hearing at 9:30 a.m.

Dr. Matthew Large, Head of Psychiatry, Royal Prince Alfred took the oath and acknowledged receipt of summons. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Ms. Isobel Holthouse, Sr. Corporate Lawyer, took the oath and acknowledged receipt of summons. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Dr. Robert Kaplan, Psychiatrist Consultant, took the oath and acknowledged receipt of summons. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Public Hearing Adjourned At 11:30.

2. **Deliberative Meeting**

A deliberative meeting was opened by the Vice Chairman (Ms. M. Andrews) at 12:10 p.m

1. Confirmation of Minutes of Meeting
Minutes of the meeting held Thursday, 20 August 1998 were adopted on the motion of G. Peacocke seconded by Mr. Merton.

2. Consideration of the Final Report - Collection of Restitution from Convicted Offenders - The Committee discussed the Final Report and discussed each recommendation.

The Committee resolved on the motion of J. Burnswoods, seconded Mr. Peacock that the Director make the discussed amendments to the report and recirculate to the Committee members as soon as possible for comment.

3. The Committee adjourned at 1:25 pm.

Minutes of Meeting of the
Joint Select Committee on Victims Compensation
10:15- 1:00 p.m., Monday, 19 October 1998
National Party Room, Parliament House

Present

Mr Stewart (Chairman)

Legislative Assembly	Legislative Council
Mr. J. Anderson	Hon. M. Gallacher
	Hon. B. Vaughan

Apologies
Messrs: Merton, Peacocke and Hon. R. Jones
Mes: Andrews and Hon. J. Burnswoods

In Attendance
Ms. C. Watson (Director), Ms. G. Magno (Assistant Committee Officer), Mr. K. Ferguson (Consultant)

Public Hearing at 10:30 a.m.

The Committee opened its proceedings for a public hearing at 10:30 a.m.

Ms. Louise Morrow, Clinical Psychologist, took the oath and acknowledged receipt of a summons. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Mr. Ben Hills, Journalist, Sydney Morning Herald, took the oath and acknowledged receipt of a summons. The Committee questioned the witness. Questioning concluded, the witness withdrew.

Mr. Cec Brahe, Chairperson, Victims Compensation Tribunal was welcomed by the Chairman, The Committee questioned the witness. Questioning concluded, the witness withdrew.

Ms. Virginia Munro, Social Worker, Vietnam Veterans Counselling Service, took the oath and acknowledged receipt of a summons. The Committee questioned the witness. Questioning concluded, the witness withdrew.

2. Public Hearing Adjourned at 12:30

Minutes of the Meeting of the
Joint Select Committee on Victims Compensation
11.30am - 12.30pm, Thursday 10 December 1998
Library Conference Room Parliament House

Present

Mr T Stewart (Chairman)

Legislative Assembly	Legislative Council
Mr J Anderson	Hon J Burnswoods Hon R Jones

Apologies
Ms M Andrews, Mr W Merton, Hon G Peacocke, Hon M Gallacher, Hon B Vaughan.

In Attendance:
Ms C Watson (Director), Mr K Ferguson (Consultant), Ms G Magno (Assistant Committee Officer), Ms M James (Research Officer).

1. Consideration of Draft Final Report on Shock

Discussion ensured regarding Recommendation.

Resolved on the motion of Mr Anderson and seconded by Mr Jones that the Recommendation should state:

That the NSW Parliament continue to monitor and review the long term financial viability of the Victims Compensation Fund through its Committee process, with emphasis on the possible misuse of the new category of psychological and psychiatric injury, the provision of approved counselling, and any other specified area.

Resolved on the motion of Mr Anderson and seconded by Mr Jones that the draft report, as amended, be the report of the Committee and that it be signed by the Chairman.

Resolved on the motion of Mr Anderson and seconded by Mr Jones that the Chairman and the Director be permitted to correct any stylistic and typographical errors that are identified while preparing the Report for printing.

Resolved on the motion of Mr Anderson and seconded by Mr Jones that the Report be presented to both Houses.

2. The Committee adjourned at 12.30pm sine die.